

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARALLE DEONTA JONES,

Defendant-Appellant.

UNPUBLISHED

June 21, 2011

No. 297587

Oakland Circuit Court

LC No. 2009-225109-FH

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Because the trial court properly denied defendant's motion for a directed verdict and defendant received effective assistance of counsel at trial, we affirm.

Defendant first argues that the trial court erred when it denied defendant's motion for a directed verdict because the prosecutor did not prove the corpus delicti before offering defendant's statements into evidence. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001).

"The corpus delicti rule requires that a preponderance of direct or circumstantial evidence, independent of a defendant's inculpatory statements, establish the occurrence of a specific injury and criminal agency as the source of the injury before such statements may be admitted as evidence." *People v King*, 271 Mich App 235, 239; 721 NW2d 271 (2006). The elements of felon in possession of a firearm are: (1) the defendant possessed a firearm; (2) the defendant was a convicted felon; and (3) the defendant's right to possess a firearm had not yet been restored. MCL 750.224f; *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004). To be guilty of felony-firearm under MCL 750.227b, one must carry or possess a firearm when committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Possession for both offenses may be actual or constructive. *Burgenmeyer*, 461 Mich at 437-438. A person has constructive possession of a firearm "if the

location of the weapon is known and it is reasonably accessible” to the person. *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989).

In this case, the prosecution established the corpus delicti of the crimes charged before it introduced defendant’s statements to the police. The parties stipulated that defendant was a convicted felon and that defendant had not met the requirements to regain eligibility to possess a firearm. Officer James Stoinski testified that he stopped a GMC Envoy while he was on patrol in Auburn Hills because the vehicle had expired plates. Defendant was a back seat passenger in the vehicle. When Stoinski opened the rear driver side door of the vehicle, he saw a nine-millimeter Smith and Wesson handgun on the back seat, about four inches away from defendant. Stoinski testified that nothing prevented defendant from grabbing the gun. Our review of the record reveals that the prosecutor established the elements of possession of a firearm by a felon and felony-firearm by a preponderance of the evidence. There was no violation of the corpus delicti rule. *King*, 271 Mich App at 239.

Moreover, the totality of the evidence presented by the prosecution was sufficient to enable a rational trier of fact to conclude that the prosecution proved the elements of the charged crimes beyond a reasonable doubt. Stoinski also testified that defendant told him that he fired two of the guns found in the vehicle at a shooting range earlier in the day. Defendant also told Stoinski that his fingerprints would be on the nine-millimeter Smith and Wesson handgun and that a chemical analysis of his hands would indicate the presence of gunpowder. Accordingly, the trial court did not err when it denied defendant’s motion for a directed verdict.

We also reject defendant’s ineffective assistance of counsel claim. Although counsel did not object to the admission of defendant’s incriminating statements at the moment the prosecutor offered them into evidence, counsel raised the corpus delicti issue when he moved for a directed verdict. Defense counsel’s decision to wait until his motion to raise the corpus delicti issue was a matter of trial strategy. “This Court is reluctant to substitute its judgment for that of trial counsel in matters of trial strategy.” *People v Strong*, 143 Mich App 442, 449; 372 NW2d 335 (1985). Had counsel raised the issue at the first instance and prevailed on his objection, the prosecutor would have had the opportunity to offer additional evidence to offset the effect of the court’s ruling. Furthermore, as we discussed, there was no violation of the corpus delicti rule. Even if counsel had failed to raise the issue, counsel would not have been deficient for failing to make a futile objection or argue a meritless position. *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004); *People v Wilson*, 252 Mich App 390, 393-394; 652 NW2d 488 (2002). With regard to counsel’s failure to object to Stoinski’s hearsay testimony, defendant has not established “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). “An erroneous admission of hearsay evidence can be rendered harmless error where corroborated by other competent testimony. *People v Hill*, 257 Mich App 126, 140; 667 NW2d 78 (2003). In addition to the hearsay testimony, Stoinski testified that defendant admitted to shooting guns at the shooting range. The hearsay testimony was merely cumulative of Stoinski’s testimony that defendant admitted to shooting guns at the range, and

with or without this hearsay, the corpus delicti was established before the trial court admitted defendant's inculpatory statements.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Amy Ronayne Krause